

CHAPTER 3 — PERSONNEL, TRAINING, AND EMPLOYEE RELATIONS

ARTICLE 1 — EQUAL EMPLOYMENT OPPORTUNITY

Revised April 2008

31010.1 Policy

It is the policy of the California Department of Corrections and Rehabilitation (CDCR) to provide a work environment free of discrimination and harassment, including zero tolerance for conduct that could lead to sexual harassment, by ensuring that applicants and employees are treated professionally and equitable in all aspects of employment including recruiting, hiring, placement, promotion, transfer, adverse action and other terms, conditions and benefits of employment without consideration of:

- Race
- Color
- National Origin
- Ancestry
- Religion
- Age
- Sex (pregnancy or gender)
- Sexual orientation
- Physical or mental disability
- Political affiliation/beliefs
- Marital Status
- Medical condition
- California Family Rights Act/Family Medical Leave Act
- Military service

It is the policy of the CDCR that every person who complains of discrimination or harassment; participates as a witness in an investigation, or other proceeding, on behalf of a complainant, shall be free from retaliation for having participated in such activities.

31010.2 Purpose

Acting on behalf of, and with the full authority of, the Secretary CDCR, the duties of the Office of Civil Rights (OCR) are to:

- Provide all employees information and training regarding the Equal Employment Opportunity (EEO) policies and the complaint processes.
- Ensure allegations of violations of EEO policy are thoroughly investigated in a fair and consistent manner, and that sustained findings of violations of EEO policies are adequately addressed by the hiring authority.
- Persons and organizations within CDCR are expected to make themselves available and to fully cooperate with any investigation conducted by OCR, including responding within a reasonable amount of time to requests for information from OCR. Failure to cooperate and/or provide information within a reasonable amount of time may be viewed as disobedience of this policy.

31010.3 Definitions

Age

Age refers to the chronological age of any individual who has reached his or her 40th birthday.

Ancestry

The national or cultural origin of a line of familial descent.

Association

An association with a member of protected group or membership in an advocate organization representing a protected group.

Color

The color of skin of an individual, including shades of skin within a racial group.

Complainant

Any individual or group of individuals who allege the Department has discriminated against them in violation of a State or Federal EEO law or regulation or departmental policy.

Civil Rights Investigator

A departmental employee, or designee, who is assigned by the Assistant Secretary, OCR, to conduct civil rights investigations.

Disability

A physical or mental impairment affecting one or more body systems which limits a major life function, including work.

EEO

The legal right of all persons to be afforded full and equal consideration for employment, retention, and advancement on the basis of merit.

EEO Counselor

A departmental employee trained in discrimination complaint processing.

EEO Coordinator

A person designated by a hiring authority to receive and coordinate internal complaints of discrimination.

External Discrimination Complaint

A formal complaint alleging discrimination filed with a State/Federal compliance agency or court against the Department by a charging party.

Family and Medical Leave Acts/California Family Rights Act

Provisions in State and Federal statutes that allow for up to 12 weeks of unpaid leave for a qualified serious health condition of the employee or the qualified serious health condition of a parent, spouse or child. California law provides the same protection for registered partners.

Hiring Authority

The Secretary, Undersecretaries, General Counsel, Chief Information Officer or any Assistant Secretary, Executive Officer, Chief Deputy Secretary, Director, Deputy Director, Associate Director, Warden, Parole Administrator, Superintendent, Superintendent of Education, Assistant Superintendent of Education, Regional Health Care Administrator, Health Care Manager, or any other person authorized by the Secretary, CDCR, to hire, discipline and dismiss staff under his/her authority.

Internal Discrimination Complaint

A formal complaint alleging discrimination filed with the OCR or any local EEO Coordinator.

Investigation

The process by which an investigator gathers evidence that either refutes or supports an employee's allegation of discrimination, harassment, or retaliation.

31010.4 Appointing Power

The appointing power (as defined by DOM Section 11010.6) shall ensure compliance with all EEO policy and procedures.

31010.4.1 Assistant Secretary, OCR

The Assistant Secretary, OCR, shall be responsible for the following:

- Providing statewide program direction in the development and implementation of the Department's EEO practices and objectives in compliance with federal and state laws and departmental policies.
- Acting on the behalf of the Secretary, CDCR, to maintain a department free of discrimination, harassment and retaliation.
- Overseeing and reviewing statewide investigations of discrimination complaints and providing advice and counsel on their resolution.
- Working with the Office of Training and Professional Development in the creation and delivery of EEO/diversity programs including monitoring and evaluating the effectiveness of such training.

31010.4.2 Program Manager, OCR

The Program Manager, OCR, shall be responsible for the following:

- Providing technical assistance to the Regional Managers, OCR, relative to State/Federal civil rights employment statutes, relevant case law, and departmental policy.
- Overseeing the most sensitive and/or complex cases.
- Assisting in the development and implementation of outreach and technical assistance; liaison with major groups, both respondent and complainant oriented, on all discrimination complaint investigation related issues; and otherwise acting appropriately to ensure that the OCR's mission of equal rights is properly presented.
- Consulting with the Assistant Secretary, OCR, in the formulation of policies and procedures; conducting special studies; responding to correspondence; preparing reports and responding to legislative correspondence relative to discrimination complaint investigations.
- Maintaining communication and keeping abreast of regional issues; maintaining a working relationship with the appropriate hiring authority representatives and employee groups; identifying and developing policy recommendations to reflect changes in the law.

31010.4.3 Office of Civil Rights, Training and Program Support Unit

The Training and Program Support Unit of the OCR is responsible for the development and distribution of policy and training materials and other EEO publications, and the delivery of training to all staff regarding the EEO policy and procedures and program support to OCR.

31010.4.4 Office of Civil Rights, Regional Offices

Each regional office (North, Central and South) is responsible for completing investigations in a timely and thorough manner; and for providing technical advice and support to EEO Coordinators within the respective regions.

31010.4.5 Hiring Authority

Each hiring authority shall be responsible for the following:

- Ensuring each allegation of discrimination is logged (regardless of whether it is referred for investigation), receives prompt attention and is addressed appropriately.
- Requesting administrative investigations if there is a potential EEO impact via a memorandum to the Assistant Secretary, OCR.
- Reviewing investigative reports to determine an appropriate course of action.
- Designating an appropriate staff member to the position of EEO Coordinator.

- Ensuring compliance with the EEO policy and procedures, including the reporting of potential violations by staff.
- Taking corrective actions as necessary.

31010.4.6 EEO Coordinator

The EEO Coordinators are responsible for the following:

- Receiving an EEO complaint by a departmental employee, initiating a Case Diary and assigning the complaint to an EEO Counselor to contact the complainant for a preliminary statement.
- Reviewing the Complaint Summary, completed by the EEO Counselor, for accuracy.
- Forwarding Case Diary, Complaint Summary and any requested documents to OCR for further processing.
- Serving as a bridge between employees and management to help resolve discrimination complaints by discussing problems with employees and with supervisors or their associates, by advising employees on the issues, and by developing appropriate solutions whenever possible.
- Selecting EEO Counselors and providing technical assistance and direction.
- Providing logistical support for on-site interviews and assistance in obtaining any requested records to the OCR Investigator.

31010.4.7 EEO Counselors

EEO Counselors shall:

- Establish and provide an open channel of communication through which employees may discuss complaints.
- Hear, answer, and advise individuals on informal complaints of discrimination.
- Direct individuals to the appropriate procedure if the issue of the complaint does not involve an allegation of discrimination.
- Explain how the discrimination complaint system works, including informing employees of their rights and responsibilities with regard to the internal discrimination complaint procedure.

31010.4.8 Investigators

OCR Investigators shall:

- Contact the complainant and verify the nature of the complaint, obtain details, and gather additional supporting evidence.
- Gather any evidence (including the taping of interviews) to make a proper determination as to whether or not a discriminatory act or violation of CDCR policy has occurred.
- Adhere to the provisions of applicable State and Federal law, Bargaining Unit contracts and Memorandums of Understanding (MOU).
- Confine the investigation to evidence relevant to the case, remaining alert to the possibility of additional violations of law or policy.
- Immediately report all problems encountered in the investigation that unreasonably restrict or impede the investigator's ability to complete the investigation, to the Regional Manager.
- Submit an investigative report to OCR management within the specified time period.

31010.4.9 Supervisors and Managers

Every CDCR supervisor and manager is responsible for attending all mandated EEO training and for ensuring that the CDCR's EEO policies and procedures are enforced and ensuring that all of their subordinate employees conduct themselves according to the standards set in the CDCR's policies regarding appropriate conduct.

31010.5 Employee Expectations and Reporting

Each employee shall adhere to the Department's EEO policies. An employee found in violation of the EEO policies, and other CDCR policies regarding appropriate conduct, may be subject to appropriate corrective action.

31010.5.1 Employee Duty to Cooperate

Every CDCR employee is required to cooperate as follows:

- In any official EEO investigation, employees shall make complete and truthful statements.
- Employees shall not take any action that might reasonably delay or unduly influence or interfere with an investigation conducted by the Department.

31010.6 Required Training for OCR Investigators

All OCR investigators are required to attend Beginning EEO Investigator Training, Advanced EEO Investigator Training OIA Basic Investigator Training and OIA Interrogation/Interviewing Training or the functional equivalent.

31010.7 Filing an Allegation of Discrimination, Harassment or Retaliation

An employee or applicant for employment may file an EEO complaint with their respective Hiring Authority or directly with OCR. The CDCR's discrimination complaint process provides a uniform method to ensure prompt and impartial consideration of complaints that allege discrimination in departmental employment practices covering recruitment, selection, appointment, compensation, transfer, training, and other terms and conditions of employment. For clarity, employees are encouraged to file their complaints using CDCR Form 693, which can be obtained from any EEO Coordinator or Counselor.

The process is intended to address complaints at the lowest possible organization level, while ensuring that each complaint receives full consideration and applicable resolution.

31010.8 Discrimination Complaint Process and Protecting Employees from Retaliation

To encourage employees to come forward and report violations of EEO policies, the CDCR prohibits acts of retaliation for making any allegation of discrimination. If any employee believes that he/she has been subjected to retaliation for having reported a violation of CDCR's EEO policies, he/she should immediately report it to the EEO Coordinator or directly to OCR.

31010.9 Logging Complaints of Discrimination

The Hiring Authority, or designee, shall log each complaint of discrimination regardless of whether the allegation is referred for investigation on the OCR Complaint Log. The log shall be complaint driven; therefore, more than one employee can be listed under one log entry. Log numbers shall be assigned using a standard logging system utilizing the following format: ABC-001-07

- The first identifier (ABC) indicates the institution (e.g., NKSP) field office or other work site acronym.
- The second identifier (001) indicates the sequential number. The sequence continues throughout the year.
- The third identifier indicates the calendar year in which the complaint was filed.

To ensure department-wide standardization and compliance with audit tools, OCR Complaint Log shall be utilized by each Hiring Authority for tracking.

31010.10 Administrative Inquiries

Administrative inquiries shall be conducted by OCR at the request of a Hiring Authority when there is an allegation of discrimination, harassment or retaliation and the respondent(s) are not clearly identifiable. Each administrative inquiry request shall be promptly investigated by the Regional Offices.

31010.11 Requests for OCR Investigation

To request an Administrative Inquiry, a hiring authority shall direct a memorandum to the Assistant Secretary, OCR, and shall attach all documentary evidence, including but not limited to, the original

completed CDCR 693, a Case Diary, any documents provided by the complainant and a copy of any correspondence sent by the Hiring Authority to the complainant and/or respondent.

31010.12 Intake

An investigator assigned to Intake for OCR shall review each complaint, all supporting documentation and may conduct a telephonic interview with the complainant to make a determination whether the complainant is accepted for investigation within (30) calendar days.

Each request or complaint shall receive a case number and be evaluated using an order of receipt approach. Outcomes of the intake process are as follows:

1. Accepted for Investigation: Allegation(s) of discrimination and/or other behavioral misconduct accepted by OCR for investigation shall be assigned to an investigator by the Regional Office Manager.
2. Referred for Investigation: These cases contain allegations that are more appropriately investigated by other entities (i.e., OIA, OIG, etc)
3. Returned to the Hiring Authority without Investigation: A request and/or complaint may be returned to the Hiring Authority for failing to meet the criteria for an OCR investigation or when OCR determines that no investigation is warranted. The request and/or complaint is returned to the Hiring Authority with a recommendation for the following:
 - Direct Discipline/Supervisory Action: If the alleged discriminatory/behavioral misconduct is sufficiently well documented or is a one time incident, the case may be referred back to the Hiring Authority for direct disciplinary/supervisory action with direction from the ERO/Disciplinary Officer and the EEO Coordinator.

For requests and/or complaints returned without investigation, a memorandum shall be completed by the Regional Office Manager and forwarded to the Hiring Authority. The memorandum shall include a detailed explanation for the action taken and shall direct the Hiring Authority, as appropriate, to determine the appropriate disciplinary action. The request and/or complaint file will remain open with the OCR until such time as verification is received by OCR from the Hiring Authority as to what action was taken. At that time, a closure letter will be sent to the complainant with a copy to the Hiring Authority.

31010.13 Case Assignment

When a request for administrative inquiry or complaint is accepted for investigation, the case shall be assigned by the Regional Office Manager (North, Central and South) to an OCR investigator. The investigator shall complete the investigative report prior to forwarding the case through management review.

31010.14 Discrimination Complaint Tracking System

The Discrimination Complainant Tracking System shall be maintained by OCR personnel for the purpose of efficiency and statistical tracking. Users include OCR clerical staff, OCR investigator, OCR Regional Managers and the Training and Program Support Unit.

31010.15 Logging Cases

All OCR administrative inquiry requests or complaints, whether investigated or not, shall be logged into OCR's case management system and numbered sequentially on an annual basis. The log shall specify, but not be limited to, the following information: the sequential number of the inquiry or complaint, the date of receipt of the inquiry or complaint, the location or facility to which the inquiry or complaint pertains, and the disposition of the inquiry or complaint.

31010.16 Retaliation Investigations

OCR is responsible for investigating complaints of retaliation as defined in Section 31010.3 of this Article. The Office of Internal Affairs (OIA) is responsible for investigating complaints of retaliation as defined under the California Whistleblower Protection Act. Any Whistleblower or other complaint of retaliation, which is not related to an EEO complaint, shall be forwarded to OIA for review and consideration.

31010.17 Employee Representation Rights

Employees are entitled to representation during investigative interviews consistent with MOU's, the Public Safety Officer Procedural Bill of Rights, and other State and Federal laws. A personal advisor, attorney, or another state employee designated by the complainant, respondent or witness may attend any interview. Employees who are possible witnesses in an investigation are excluded as employee representatives.

31010.18 Use of State Time

Use of State time for filing an EEO complaint or participating in investigations shall be approved by the employee's supervisor. Absent an emergency, employees may request and shall be allowed reasonable State time by the supervisor to contact/secure a representative, and to discuss the matter with the representative prior to any interview.

31010.19 Statute of Limitations

OCR investigations must be completed in a prompt manner so as to allow hiring authorities ample opportunity to take corrective action. The statutes of limitation contained in Government Code section 3304(d) and (g) for public safety officers and Government Code section 19635 for non public safety employees shall be followed.

31010.20 Complainant/Respondent Interviews

All departmental employees who are either the complainant or respondent in an OCR investigation and subject to an interview shall be informed of the following before the interview: (1) name and classification of the investigator; (2) name and classification of all other personnel to be present during the interview; and (3) the nature of the investigation in sufficient detail to allow the employee to respond to the investigator's questions.

31010.21 Witness Interviews

If during a witness interview, facts are discovered that the witness may be named as a respondent in the investigation, the OCR investigator shall immediately discontinue the interview. The OCR investigator shall reschedule the interview applying all procedures related to a respondent in an investigation.

31010.22 Recording Interviews for OCR Investigation

During an OCR investigation, all noticed employee interviews, concerning matters that could lead to disciplinary action, shall be recorded.

Any recording of a noticed investigatory interview shall be as follows: (1) Made openly with the full knowledge of the employee being interviewed; (2) Documented as part of the final report; and (3) Retained for later transcription, if needed.

Any recording made of an interview shall not be released unless it is part of an adverse action or as otherwise required by law or bargaining unit contract. All recordings shall be retained with the case file.

31010.23 Additional Misconduct Discovered During an Investigation

If an investigation/inquiry of alleged discrimination reveals other possible misconduct, unrelated to the current investigation, the OCR investigator shall promptly present the facts to the Regional Manager. The Regional Manager will inform the Hiring Authority and consult with the Office of Legal Affairs (OLA) to determine whether to initiate a new OCR investigation, refer the matter to their hiring authority to handle as a supervisory issue, or to refer the case to OIA.

31010.24 Confidentiality of Investigations

All investigative records of the OCR are confidential. OCR investigators, EEO Coordinators, EEO Counselors, OCR support staff and others involved in an investigation/inquiry shall not discuss with others, with the exception of Department legal counsel, any aspect of any investigation without approval, or as otherwise required by law.

31010.25 Investigative Report

The Assistant Secretary, OCR, shall develop a standard report format to be used in all OCR investigations. The format shall be set forth in the OCR Investigations Manual.

31010.26 Distribution of Investigations

Upon completion of each OCR investigation, the investigator shall forward the investigative report and case file which includes all supporting documents and investigative notes, to the SSMI supervisor who will review and approve. Upon approval by the supervisor, the investigative report and case file shall be forwarded to the Regional Manager for review and approval. Upon approval by the Regional Manager, the investigative report and case file shall be forwarded to the Program Manager, OCR, for final review and approval.

31010.27 Maintenance of Case Files

All case files shall be processed and stored in a secure location.

31010.28 EEO Advisory Committee

Each institution/parole region shall establish an EEO committee which is to meet on a quarterly basis, to serve in an advisory capacity to the hiring authority on EEO matters including complaints and training.

EEO Advisory Committee Membership shall include the following individuals:

- Warden or Regional Parole Administrator (RPA) and Deputy RPA.
- Institution EEO Coordinator.
- EEO Counselors.
- Disabled Advisory Committee (DAC) representative.
- Representatives from major work locations selected by the Warden/RPA.
- Representative from departmentally recognized advocacy groups.

31010.29 Disabled Advisory Committee (DAC)

The DAC shall provide advice and assistance to the Assistant Secretary on issues related to disabled employees, such as:

- The development, implementation, and maintenance of EEO and Affirmative Action programs and activities for persons with disabilities.
- Projects to improve the personnel practices and employment opportunities for disabled persons.
- Liaison with groups and organizations that are concerned with achieving equitable representation and utilization of disabled persons in the Department's work force.
- Monitoring of issues concerning the committee to ensure that necessary actions occur within reasonable time frames.

Membership

The committee shall consist of one representative and one alternate from each institution, each parole region, PIA, and Central Office. Representatives shall be selected by the appropriate hiring authority.

Resources

Members of the committee shall be primarily involved with the duties and responsibilities of their specific assignments; local administrators shall make the necessary arrangements to permit members an average of four hours a week, as needed, in which to perform committee activities.

Meetings

The committee shall meet as called by the DAC Chairperson, and at least annually with OCR.

31010.30 Upward Mobility Program

This program provides career opportunities within the Department for permanent, full-time employees in lower paying classifications with a demonstrated interest and ability to advance to their highest potential.

31010.30.1 How to Participate

An employee who wishes to participate in the departmental Upward Mobility Program shall:

- Complete CDC Form 915, Upward Mobility Career Plan.
- Make a self assessment of eligibility, interests, skills, and abilities.
- Determine career options and desires.
- Discuss career goals with supervisor.

Supervisors

Shall be responsible for:

- Encouraging eligible employees to investigate opportunities for promotion or transfer by upward mobility means.
- Keeping employees apprised of upward mobility opportunities.
- Reviewing an employee's Upward Mobility Plan as part of their annual performance evaluation.

Human Resources

Shall be responsible for:

- Working with management and the personnel section in identifying and developing upward mobility opportunities within the Department.
- Developing assisting and monitoring the implementation of program objectives that will improve present working conditions and upward mobility career development for employees in lower paying classifications within the Department.
- Making recommendations to personnel in the development of bridging classifications from clerical to professional technical classifications.
- Providing assistance to interested employees having an approved Upward Mobility Plan, CDC Form 915, on file with job opportunity information.

31010.31 Purging Investigative Case Files

Investigative case files and records shall be purged and destroyed as provided in the Records Retention Schedule. Purging may be postponed if litigation or potential litigation is pending or if there are other justifiable reasons. The OCR shall forward a memorandum to the Assistant General Counsel, Labor and Human Resources Legal Team, OLA, listing records to be purged and destroyed to determine if there is current litigation. The OLA will review with appropriate staff before authorizing, in writing, the purging of these records.

31010.32 Revision

The Assistant Secretary, OCR, or designee, shall ensure that the content of this section is accurate and current.

310.10.33 References

Federal

United State Constitution, 14th Amendment.

Civil Rights Acts of 1966, 1970, 1971.

Title VII of the Civil Rights Act of 1964 (amended in 1973).

Equal Pay Act of 1964 (amended in 1972).

Uniformed Services Employment and Reemployment Act.

State

Fair Employment and Housing Act GC Sections 12940, et seq.

GC §§ 19790 – 19795; 19230 – 19237; 19400 – 19406.